



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 14, 1995

Ms. Ellen Dodd
Matagorda County Auditor
1700 Seventh Street, Room 326
Bay City, Texas 77404-0487

Letter Opinion No. 95-081

Re: Whether the filing of an affidavit to support issuance of an arrest warrant by a magistrate stops the running of the statute of limitations on a class A or class B misdemeanor (ID# 31601)

Dear Ms. Dodd:

On behalf of a justice of the peace in your county, you seek our opinion as to whether the filing of a "complaint" of a class A or class B misdemeanor in a justice court—pursuant to which "complaint" the justice of the peace issues an arrest warrant—in itself tolls the running of the statute of limitations. While a justice of the peace has authority to issue an arrest warrant for a class A or class B misdemeanor, justice courts do not have jurisdiction to try such offenses. Such jurisdiction lies rather in the county courts. See Tex. Const. art. V, §§ 16, 19; Gov't Code §§ 25.0003, 26.045; Penal Code §§ 12.21-.22; Code Crim. Proc. arts. 2.09, 4.07, .11.

Code of Criminal Procedure article 12.02 provides that "[a]n indictment or information for any misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward." However, article 12.05 provides:

(a) The time during which the accused is absent from the state shall not be computed in the period of limitation.

(b) The time during the pendency of an indictment, information, or *complaint* shall not be computed in the period of limitation.

(c) The term "during the pendency," as used herein, means that period of time beginning with the day the indictment, information, or complaint is filed in a court of competent jurisdiction, and ending with the day such accusation is, by an order of a trial court having jurisdiction thereof, determined to be invalid for any reason. [Emphasis added.]

It appears that your question is prompted by the use in the Code of Criminal Procedure (the "code") and case law of the word "complaint" to mean both the sworn statement supporting issuance of an arrest warrant by a magistrate and the "affidavit of a credible person" supporting the filing of an information. Chapter 15 of the code sets out

the procedures for an "Arrest Under Warrant." Article 15.03 thereof provides that a "magistrate" may issue a warrant of arrest, *inter alia*, "[w]hen any person shall make oath before the magistrate that another has committed some offense against the laws of the State." Article 15.04 thereof states that "[t]he affidavit made before the magistrate or district or county attorney is called a 'complaint' if it charges the commission of an offense."

Chapter 21 of the code, "Indictment and Information," provides for the charging of a person with an offense by either indictment by the grand jury or by an "information" filed by the district or county attorney. Code Crim. Proc. arts. 21.01, .20. Article 21.22, "Information based upon complaint," provides in part: "No information shall be presented until affidavit has been made by some credible person charging the defendant with an offense. The affidavit shall be filed with the information."

Your question essentially is which "complaint" is referred to in the article 12.05(b) provision for the tolling of the running of the statute of limitations "during the pendency of . . . [a] complaint." Case law on this question holds that the complaint referred to in article 12.05(b) is that supporting and filed with the information under article 21.22, and not the chapter 15 "complaint" supporting an arrest warrant. The court in *State v. Edwards*, 808 S.W.2d 662 (Tex. App.--Tyler 1991, no writ), in response to the State's argument that the filing of the affidavit used to support the arrest warrant for a class B misdemeanor theft by check had tolled the two-year statute there, even though the chapter 21 complaint and information were not filed until more than three years thereafter, wrote:

[T]he affidavit required by article 15.05 to support a warrant of arrest is not to be confused with the affidavit required by art. 21.22 to support an information. *Jernigan v. State*, 661 S.W.2d 936 (Tex.Cr.App.1983), *cert. denied*, 464 U.S. 986 Although both are called complaints, they are derived from separate provisions of previous codes that have separate purposes [Art. 12.05(b)] serves only to stay the running of the limitation period during the pendency of the type of accusatory pleading appropriate to invoke the jurisdiction of a court of competent jurisdiction. A court of competent jurisdiction is one that has jurisdiction of the offense . . . *Hultin v. State*, 171 TEX.CR.R. 425, 351 S.W.2d 248, 255 (1961).

. . . . Class C misdemeanors may be prosecuted in justice court upon a complaint alone.¹ However, the prosecution of a misdemeanor in county court must be instituted by the filing of both a complaint and information. A conviction obtained upon a complaint without an information is void. *Diez v. State*, 157 TEX.CR.R. 275, 248 S.W.2d 486 (1952). Edwards was charged with a class B

¹See Code Crim. Proc. art. 45.16.

misdemeanor. Both a complaint and information are necessary to confer jurisdiction on the County Court to try the case. Therefore, a filed misdemeanor complaint without a filed misdemeanor information does not suffice to toll the running of limitations under art. 12.05(b).

Id. at 663 (footnote added); *see also Marbach v. State*, 773 S.W.2d 411 (Tex. App.--San Antonio 1989, no writ) ("[A] filed misdemeanor complaint without a filed information does not trigger article 12.05(b) . . .").

Accordingly, we conclude in response to your question that the filing of an affidavit to support issuance of an arrest warrant by a justice of the peace does not stop the running of the statute of limitations for a class A or class B misdemeanor. The statute is tolled, rather, by the filing of an information with supporting affidavit in the county court.

S U M M A R Y

The filing of an affidavit to support issuance of an arrest warrant by a justice of the peace does not stop the running of the statute of limitations for a class A or class B misdemeanor. The statute is tolled, rather, by the filing of an information with supporting affidavit in the county court.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee